3900

SUPREME COURT OF THE UNITED STATES.

No. 195.

EDWARD MINTURN, COMP'T AND APP'T,

vs.

JAMES B. LARUE, CARLISLE P. PATTERSON, AND JOHN R. FOURATT.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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UNITED STATES OF AMERICA,
Northern District of California.

Before the judges of the United States circuit court for the districts of California in and for the northern district thereof, at the court-house in the city of San Francisco, in the stated July term, A. D. 1858.

Witness the Hon. M. Hall McAllister and the Hon. Ogden Hoffman, judges of said court.

Be it remembered, that at the stated January term, in the year of our Lord *A. D.* 1858, before the judges of said circuit court of the United States for the districts of California in and for the northern district, sitting as a court of chancery, came Edward Minturn, the complainant, by his solicitor, E. W. F. Sloan, and filed in said court, before the aforesaid judges thereof, his certain bill of complaint against James B. Larue, Carlisle P. Patterson, and John R. Fouratt, which said bill is in the words and figures following, that is to say:

Bill.

To the honorable the judges of the circuit court of the United States for the districts of California in the northern district of California.

Edward Minturn, a citizen of the State of New York, and resident in the city of New York, brings this his bill of complaint against James B. Larue, Carlisle P. Patterson, and John R. Fouratt, citizens of the State of California, and residents in said northern district.

And thereupon your orator, complaining, shows that the charter or act of incorporation of the then "town of Oakland," (now city of Oakland,) passed by the legislature of the State of California on the 4th day of May, A. D. 1852, vested in the board of trustees of said town the power to establish, lay out, make, open, widen, regulate, and keep in repair all streets, roads, bridges, ferries, public places and grounds, wharves, docks, piers, slips, wells, alleys, &c.; and with a view to facilitate the construction of wharves and other improvements, the lands lying within the corporate limits of the said town of Oakland, between high tide and ship channel, were, by the same enactment, granted and released to said town. to be retained by it as common property, or be disposed of for said purposes; all which will more fully appear by reference to a copy of said act of incorporation, herewith filed as part of this bill of complaint, marked exhibit "A."

And your orator, further complaining, shows that afterwards, to wit, on the 27th day of May, 1852, said board of trustees passed

an ordinance conveying to and vesting in Horace W. Carpentier the titles to said lands so granted and released to said town, or providing for such conveyance, in consideration that he, the said Horace W. Carpentier, should construct or cause to be constructed thereon certain wharves, and should erect or cause to be erected, within and for the use of said town of Oakland, a public school-house; and also authorizing and empowering the president of said board of trustees to execute to the said Horace W. Carpentier a deed of conveyance to said lands; all which will more fully and at length appear by reference to a copy of said ordinance, herewith filed as a part of this bill of complaint, marked exhibit "B."

And your orator, further complaining, shows that afterwards, to wit, on the 31st day of May, 1852, a deed conveying said lands to Horace W. Carpentier was duly executed and delivered to him pursuant to said ordinance, thereby vesting in him, his heirs and assigns, the title thereto; all which will more fully and at length appear by reference to a copy of said deed, herewith filed as a part of this bill of complaint, marked exhibit "C."

And your orator further showeth, that in consideration thereof the said Horace W. Carpentier constructed or caused to be constructed a good and substantial wharf upon said land, within the corporate limits of said town, whereof he made report to said board of trustees; and afterwards, to wit, on the 30th day of December, 1852, said board, by ordinance or resolution of that date, signified their approval of the wharf so constructed, and also extended the time for the construction of others; all which will more fully appear by reference to a copy thereof, herewith filed as part of this bill of complaint, marked exhibit "D."

And your orator, further complaining, shows that the said Horace W. Carpentier, in consideration aforesaid, also erected or caused to be erected a good and commodious school-house in and for the use of said town of Oakland, of which he made report to said board of trustees; and afterwards, to wit, on the 27th day of August, 1853, said board in like manner approved and accepted of the same, and said town went immediately into the possession, use, and enjoyment thereof; and the said board did then and there, by ordinance or resolution, proceed to modify the former ordinance touching the construction of other wharves, as to time and place, and to confirm to the said Horace W. Carpentier, his heirs, &c., the grant to said lands, with the right in him, his heirs and assigns, to erect wharves, piers, docks, and buildings at any and all points thereon, not obstructing navigation, and freely to use and occupy said lands so conveyed; all which will more fully appear by reference to a copy of said ordinance or resolution, herewith filed as part of this complaint, marked exhibit "E."

And your orator further shows, that on the 5th day of March, 1853, said board of trustees did ordain, make, and establish, or provide for the making, establishment, and regulation of a ferry between

said town (now city) of Oakland and the city of San Francisco, and did then and there contract with Edward R. Carpentier, his heirs and assigns, to put in operation, keep up, and run said ferry for the term of twenty years, and did then and there grant to him, his heirs and assigns, the exclusive privilege, right, and franchise to put in operation, own, run, and keep in operation said ferry for the period aforesaid, upon certain terms and conditions, and under certain restrictions, and to demand and receive fare and compensation therefor; all which will more fully appear by reference to an ordinance passed by said board of trustees on said 5th day of March, 1853, a copy whereof is herewith filed as part of this bill of complaint, and marked exhibit "F."

And your orator further shows, that afterwards, to wit, on the 12th day of March, 1853, an instrument or contract in writing was duly made and executed, pursuant to said last-mentioned ordinance, by and between the "town of Oakland" and the said Edward R. Carpentier, whereby and by virtue of said ordinance said Edward R. Carpentier, his heirs and assigns, were authorized and required to erect and put in operation said ferry, at his or their own proper cost and expense, and to keep, maintain, and run the same for and during the period of twenty years as aforesaid, or to cause the same to be done. Certain restrictions were thereby placed upon the charges and rates of ferriage, and one per centum of the net profits were to be paid annnally to said town of Oakland; all which will more fully appear by reference to the ordinance last aforesaid, and the contract made in pursuance thereof, a copy whereof is herewith filed as part of this bill, marked exhibit "G."

And your orator further shows, that immediately thereafter the said Edward R. Carpentier, in the fulfilment of his obligations, in the exercise of the powers, rights, privileges, and franchises so conferred on him, proceeded to put in operation said ferry, and did, by contract with Charles Minturn and the "Contra Costa Steam Navigation Company," a body corporate in said district, cause the same to be put in operation, maintained, and run, with suitable steam ferry-boats, in accordance with the public demands and the requirements of said last-mentioned ordinance, and the said contract made in pursuance thereof.

And your orator further shows, that shortly thereafter the said Edward R. Carpentier sold, conveyed, assigned, transferred, and set over to said Charles Minturn and said "Contra Costa Steam Navigation Company" the said "Oakland ferry," with all the rights, powers, privileges, franchises, and immunities connected therewith; and afterwards, to wit, on the 21st day of October, 1854, by an indenture duly executed by and between Horace W. Carpentier, Edward R. Carpentier, and Harriet N. Carpentier, on the one part, and the said Charles Minturn and the "Contra Costa Steam Navigation Company," on the other, said act of sale, conveyance, assignment, and transfer was further assured and confirmed unto the

said Charles Minturn and "Contra Costa Steam Navigation Company," and their assigns, whereby also they and their assigns were vested with the sole and exclusive right of landing steam ferry-boats running between the city (formerly the town) of Oakland and the city of San Francisco, or between said city of Oakland and any other place, at any wharf or landing which then was or which might thereafter be constructed in said city (formerly the town) of Oakland, which they, the said Horace W. Carpentier, Edward R. Carpentier, and Harriet N. Carpentier, or either of them, then held or had, or might thereafter acquire therein, together with all the rights, powers, privileges, franchises, and emoluments appurtenant to said Oakland ferry, subject, however, to the duties and obligations hereinbefore mentioned, and to the performance of certain covenants and stipulations in said last-mentioned indenture contained; all which will fully appear by reference to a copy thereof, herewith filed as part of this bill, marked exhibit "H."

And your orator, further complaining, shows that afterwards, to wit, on the 1st day of April, 1858, by an indenture of that date, duly executed by and between the said Charles Minturn and the Contra Costa Steam Navigation Company on the one part, and your orator on the other part, the said "Oakland ferry," with all the rights, powers, privileges, franchises, and emoluments, which *is* of great value, to wit, of the value of twenty thousand dollars, was sold, assigned, transferred, and set over unto your orator, his executors, administrators, or assigns, together with the sole and exclusive right of landing steam ferry-boats at any of the wharves or landings aforesaid, and any and all other rights, privileges, powers, and franchises appurtenant thereto, whereby he became the proprietor thereof in as full and complete a manner as the same vested in all or any of his assignors aforesaid; all which will more fully appear by reference to said last-mentioned indenture, a copy whereof is herewith filed as a part of this bill of complaint, marked exhibit "I."

And your orator, further complaining, shows that the said town, (now city) of "Oakland" is situated about seven miles distant from said city of San Francisco, in said district, in the direction of east by north, and on the opposite side of that arm of the bay of San Francisco which extends towards the south of said last-mentioned city; that the route of said ferry between the city of San Francisco and Oakland, and at a point about four miles distant from the former, is traversed by a sand bar, extending in width about one thousand feet in the direction of the latter, on and over which the average depth of water at ordinary low tide is about two feet, and extreme low tide about seventeen inches, the tendency of which is to render the running of said ferry more difficult, and at times to prevent the running of steam ferry-boats (of sufficient depth and capacity for safety) with perfect regularity.

And your orator shows that the said Charles Minturn and Contra

Costa Steam Navigation Company, under the procurement of the said Edward R. Carpentier, and afterwards as proprietors of said Oakland ferry, did proceed, at great trouble and expense, to employ, construct, equip, furnish, officer, and man suitable steam ferry-boats, and to run the same on said Oakland ferry, between said town of Oakland and city of San Francisco, periodically, as required by the public demands, and as permitted by the state of the tides; and that ever since said "Oakland ferry" was ordained and created as aforesaid, the said grantee thereof and his assigns aforesaid have faithfully performed their duties and obligations in that behalf, by putting, keeping, and maintaining in operation said ferry, and have in all respects complied with and performed all the requirements of the ordinance and contract aforesaid made in pursuance thereof, marked exhibits F and G. That relying upon and encouraged by the pledge of an exclusive privilege to run and enjoy the profits of said ferry for the period of twenty years as aforesaid, they engaged in the uncertain and hazardous experiment of putting in operation and running the same; and they continued to maintain said ferry at a time when the income accruing from the transportation of freight and passengers thereon fell far short of the expenditures; and it was not until after the lapse of three years that, by the establishment of confidence in the regularity and permanence of said ferry, the business thereof so increased as to yield a remunerative profit. And your orator is advised, believes, and charges, that as the proprietor of said Oakland ferry, with all the rights, powers, privileges, and franchises appurtenant or incident thereto, he has the sole and exclusive right to run the same, and to demand and receive the profits and emoluments arising therefrom. And he had well hoped he would be permitted to have, hold, and enjoy the same.

But so it is, may it please your honors, that the said defendants, combining and confederating with each other in the pursuit of unlawful gain, in violation of all the just and lawful rights of your orator as aforesaid, and with the wrongful intent to injure your orator in the premises, to prevent his enjoyment of the profits, franchises, rights, and privileges aforesaid, and to divest him thereof, have recently usurped the franchise and privilege of running a ferry between said city of San Francisco and said city of Oakland, in avowed opposition to said established "Oakland ferry," and are now engaged, without any lawful license or authority, in wrongfully attempting to maintain such opposition ferry, by running a steamboat called the "San Antonio" between said points, in the same line, and at times corresponding with the running of the boats of your orator on said "Oakland ferry;" and by the fabrication of false and malicious representations of and concerning said Oakland ferry, have created and fostered a prejudice in the public mind against it, and have thereby succeeded in diverting a great portion of the public patronage from said Oakland ferry to said opposition

boat, to the common nuisance and great damage of your orator in the premises.

And your orator is informed, believes, and charges, that said defendants threaten and intend to continue unlawfully and wrongfully to run said steamboat "San Antonio" upon said line, in opposition to said Oakland ferry, and have advertised the public, through the newspapers and otherwise, that such is their intention, and that, unless restrained from so doing by the process, order, or decree of this honorable court, they will continue to usurp the franchises of a ferry, to divert or destroy or greatly diminish the patronage of said "Oakland ferry," to violate the rights and privileges of your orator therein, to deprive him of the profits lawfully accruing to him therefrom, and to render his said franchise useless, to the great and irreparable injury of your orator in the premises, and which is and would be to him a continuing nuisance. And your orator is informed, believes, and charges, that the defendants have no property or other visible means subject to execution at law, by which they could be made to respond in damages for the injury they have done, are continuing to do, your orator as aforesaid; and besides, that the injury so being done by the defendants, and so threatened to be indefinately repeated and continued, is of such a nature and character (as hereinbefore described) that no adequate compensation in damages can be had therefor.

In consideration whereof, and forasmuch as your orator is remediless at and by the strict rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this and the like nature are properly cognizable and relievable—

To the end, therefore, that the said defendants may, upon their and each of their corporal oaths, full, true, and perfect answers make to all and singular the matters and things herein contained, in as full and perfect a manner as if the same were herein repeated, and they particularly interrogated thereto, and that the said defendants, their confederates, agents, and servants, may be, by the order, judgment, and decree of this honorable court, perpetually enjoined and restrained from running, causing to be run, or attempting to run, the said steamboat "San Antonio," or any other steamboat or vessel, as a ferry between the city of San Francisco and city of Oakland aforesaid, in opposition to said "Oakland ferry," and otherwise opposing, interfering with, or disturbing your orator in the sole and exclusive use and enjoyment of said Oakland ferry, with all its privileges, franchises, profits, and emoluments—

May it please your honors to grant unto your orator the most gracious writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said defendants, restricting and enjoining them, their confederates, agents, and servants, from running or attempting to run said steamboat "San Antonio," or any other steamboat or vessel, in manner aforesaid, in opposition to said Oakland ferry, and from otherwise opposing, interrupting,

disturbing, or interfering with your orator in the sole and exclusive use and enjoyment of said "Oakland ferry," and of the rights, privileges, franchises, emoluments, and profits connected therewith or incident thereto; that the writ of subpœna may also issue, directed in like manner, commanding them, on a certain day and under a certain pain, to appear and answer the premises; and that they may stand to and abide by such order, direction, and decree in the premises as your honors make therein; and that your orator may have such other or further relief in the premises as the nature of the case shall require, and as in equity may seem meet. And your orator will ever pray, &c.

(Signed) E. W. F. SLOAN,
Sol'r for Complainant.

(Signed) HOGE & WILSON, *of Counsel.*

NORTHERN DISTRICT OF CALIFORNIA,
County of San Francisco, ss:

B. M. Hartshorne, being duly sworn, deposes and says, that he is the agent and attorney in fact of the above-named complainant, who is absent from the State; that he has read the foregoing bill of complaint, and understands the contents thereof; that the same is true of his own knowledge, except as to the matters and things therein stated to be upon information and belief, and that as to these matters he believes it to be true.

(Signed) B. M. HARTSHORNE.

Sworn to and subscribed before me this 1st day of May, A. D. 1858.

(Signed) GEO. PEN JOHNSTON,
U. S. Comm'r.

Endorsed: Filed May 1, 1858. Signed, Geo. Pen Johnston, clerk, by E. C. Palmer, deputy.

Exhibit "A."

An act to incorporate the town of Oakland, and to provide for the construction of wharves thereat.

The people of the State of California, represented in senate and assembly, do enact as follows:

Incorporation of the town.

SECTION 1. The inhabitants of the district of country hereinafter described are hereby declared to be incorporated, under the provisions of "An act to provide for the incorporation of towns," passed March 27, 1850, with the style of the town of Oakland, and by that name they shall have perpetual succession, may sue and be sued, and may purchase, receive, and hold property for the common benefit, and sell or otherwise dispose of the same.

Boundaries.

The boundaries of said town shall be as follows: On the northeast by a straight line, at right angles with Main street, running from the bay of San Francisco on the north to the southerly line of the San Antonio creek or estray, crossing Main street at a point three hundred and sixty rods northeasterly from "Oakland house," on the corner of Main and First streets, as represented on Porter's map of "Contra Costa," on file in the office of the Secretary of State; thence down the southerly line of said creek or slough to its mouth in the bay; thence to ship channel; thence northerly and easterly by the line of ship channel to a point where the same besects the said northeastern boundary line.

Corporate powers. Trustees, &c. Term of office. No compensation allowed.

SECTION 2. The corporate powers and duties of said town shall be vested in a board of trustees, to consist of five members, who shall be elected by the qualified electors of said town on the second Monday of May in each year, and shall hold office for the term of one year, or until their successors are qualified: Provided, They shall receive no compensation for their services.

SECTION 3. The board of trustees shall have power to make such by-laws and ordinances as they may deem proper and necessary; to regulate, improve, sell, or otherwise dispose of the common property; to prevent and extinguish fires; to lay out, make, open, widen, regulate, and keep in repair all streets, roads, bridges, ferries, public places and grounds, wharves, docks, piers, slips, sewers, wells, and alleys, and to authorize the construction of the same; and with a view to facilitate the construction of wharves and other improvements, the lands lying within the limits aforesaid, between high tide and ship channel, are hereby granted and released to said town.

Creation of ordinances.

Provided, That said lands shall be retained by said town as common property, or disposed of for the purposes aforesaid; to regulate and collect wharfage and dockage; to secure the health, cleanliness, ornament, peace, and good order of said town; to organize and support common schools; to license and suppress dram shops, horse-racing, gambling houses, and houses of ill fame, and all indecent, or immoral practices, shows, and amusements; to regulate the location of slaughter-houses, stables, and places for the storage of gunpowder; and to pass such other laws and ordinances as in their opinion the order, good government, and welfare of the town may require.

SECTION 4. The elections and returns under this act shall be regulated in the same manner as is provided in the said act, "Act to

provide for the incorporation of towns," for elections when ordered by the Governor.

Approved May 4, 1852.

(Endorsed:) Exhibit "A." Filed May 1st, 1858. (Signed) Geo. Pen Johnston, clerk, by E. C. Palmer, deputy.

Exhibit "B."

An ordinance for the disposal of the water front belonging to the town of Oakland, and to provide for the construction of wharves, of the town of Oakland.

The board of trustees do ordain as follows:

SECTION 1. The exclusive right and privilege of constructing wharves, piers, and docks, at any point within the corporate limits of the town of Oakland, with the right of collecting wharfage and dockage, at such rates as he may deem reasonable, is hereby granted and confirmed to Horace W. Carpentier and his legal representatives, for the period of thirty-seven years, provided that the said grantee or his representatives shall, within six months, provide a wharf at the foot of Main street, at least twenty feet wide, and extending towards deep water fifteen feet beyond the present wharf at the foot of said street; that he or they shall, within one year, construct a wharf at the foot of F street or G street, extending out to book channel, and also within twenty months another wharf, at the foot of "D" street or "E" street, provided that two per cent. of the receipts for wharfage shall be payable to the town of Oakland.

SECTION 2. With a view the more speedily to carry out the intentions and purposes of the act of the legislature passed May 4th, one thousand eight hundred and fifty-two, entitled "An act to incorporate the town of Oakland, and to provide for the construction of wharves thereat," in which certain property is granted and released to the town of Oakland, to facilitate the making of certain improvements: now, therefore, in consideration of the premises herein contained, and of a certain obligation made by said Horace W. Carpentier with the town of Oakland, in which he undertakes to build for said town a public school-house, the water front of said town, that is to say, all the land lying within the limits of the town of Oakland, between high tide and ship channel, as described in said act, together with all the right, title, and interest of the town of Oakland therein, is hereby sold, granted, and released unto the said Horace W. Carpentier, and to his assigns or legal representatives, with all the improvements, rights, and interest thereunto belonging.

SECTION 3. The president of the board of trustees is hereby charged with the duty of executing, on behalf of the town of Oak-

land, a grant and conveyance in accordance with the provisions of this ordinance.

(Signed) AMEDEE MARIER,
President of the Board of Trustees.
(Signed) F. K. SHATTUCK,
Clerk Board Trustees.

I, F. K. Shattuck, clerk of the board of trustees of the town of Oakland, duly elected and qualified, do hereby certify that the foregoing is a true copy of an ordinance passed by the board of trustees of said town, and now on file.

In witness whereof, I have hereunto set my hand and private seal, there being as yet no corporate seal for said town of [SEAL.] Oakland, this 31st day of December, A. D. 1852.

(Signed) F. K. SHATTUCK,
Clerk of the Board of Trustees.

Filed for record the 12th day of Jan'y, 1853, at 11 o'clock a. m. Recorded the 12th day of Jan'y, 1853, at 3 o'clock p. m.
THOMAS A. BROWN, *Co. R.*

I, Thomas A. Brown, recorder, duly elected and qualified, in and for the county of Contra Costa, do certify that the foregoing is a correct copy of a record in this office, vol. 2, pages 325 and 326, book of deeds.

Witness my hand and seal of office, this 16th day of [SEAL.] June, A. D. 1853.

(Signed) THOS. A. BROWN,
County Recorder.
Per L. M. BROWN, *Dep'y.*

Endorsed: Exhibit "B." Filed May 1, 1858. (Signed) Geo. P. Johnston, clerk, by E. C. Palmer, deputy.

Exhibit C.

Know all men by these presents, that I, Amadee Marier, president of the board of trustees of the town of Oakland, in the county of Contra Costa, and State of California, in conformity to the provisions of an ordinance passed by said board of trustees, bearing date May 27th, 1852, and entitled "An ordinance for the disposal of the water front belonging to the town of Oakland, and to provide for the construction of wharves," and by virtue of authority vested in me, as president of the board of trustees, by the constitution and laws of the State of California, and especially by an act of the legislature, approved May 4, 1852, and entitled "An act to incorporate the town of Oakland, and to provide for the construction of wharves thereat," in my official capacity as said president, and in view of the public convenience, have granted to Horace W. Car-

pentier and his legal representatives the exclusive right and privilege of constructing wharves, docks, and piers, at any point or points within the now corporate limits of the town of Oakland, with the right of collecting wharfage and dockage for the period of thirty-seven years; and in consideration of the covenants hereinafter mentioned, and of five dollars paid to the town of Oakland, the receipt whereof is hereby acknowledged, in obedience to the ordinance aforesaid, and by virtue of the authority aforesaid vested in me as president of the board of trustees as aforesaid, now, by virtue of said office, I have sold, and by these presents do sell, transfer, grant, and release unto the said Horace W. Carpentier and his legal representatives all the right, title, and interest of the said town of Oakland in and to the water front of said town, that is to say, all the land lying within the now corporate limits of the town of Oakland, and situated between high tide and ship channel, as granted to said town by and as described in said above-entitled act: to have and to hold the same, provided that the said Carpentier or his legal representatives shall, within six months, provide a wharf at the foot of Main street at least twenty feet wide, and extending towards deep water fifteen feet beyond the present wharf at the foot of Main street; that he or they will, within one year, construct a wharf at the foot of "F" street or "G" street, extending out to boat channel, and also within eighteen months another wharf at the foot of "D" street or "E" street; and provided also that two per cent. of the receipts for wharfage shall be payable to the town of Oakland.

In witness whereof, I, the said president of the board of trustees of the town of Oakland, have hereunto set my hand and private seal, at Oakland, May 31st, 1852. [SEAL.]

(Signed) A. MARIER,
President of the Board of Trustees.

Signed, sealed, and delivered in presence of—
(Signed) T. C. GILMAN.

STATE OF CALIFORNIA,
County of San Francisco, ss:

On this first day of June, A. D. 1852, before me, R. S. Lamott, a notary public duly commissioned and sworn in and for the county aforesaid, personally appeared Amadee Marier, to me known to be the person described in and who executed the foregoing conveyance, who acknowledged that he executed the same freely and voluntarily, and for the uses and purposes therein expressed.

Witness my hand and seal of office on the day and year last above written. [SEAL.]

(Signed) ROBT. S. LAMMOT.

In consideration of the above grant and all the premises, I, Horace W. Carpentier, do hereby covenant and agree to carry out the

object and purposes of this grant and conveyance; to construct the wharves as herein provided for, and to build for the town of Oakland a public school-house, agreeably to the terms of an obligation in reference thereto made by me and bearing an earlier date.

[SEAL.] In witness whereof, I have hereunto set my hand and seal, at Oakland, May 31, 1852.

(Signed) H. W. CARPENTIER.

Signed, sealed, and delivered in presence of—

(Signed) T. C. GILMAN.

Endorsed: Exhibit "C." Filed May 1, 1858. Signed, Geo. Pen Johnston, clerk, by E. C. Palmer, deputy.

Exhibit D.

An ordinance to approve the wharf at the foot of Main street, and to extend the time for constructing the other wharves.

The board of trustees of the town of Oakland do resolve and ordain as follows:

SECTION 1. The board of trustees, having examined the wharf built by Horace W. Carpentier at the foot of Main street, in said town, and having had the matter under consideration, do find that the same is built and completed to their entire satisfaction, and according to the terms and within the time specified in an ordinance of this board passed May 18th, 1852, and entitled "An ordinance for the disposal of the water front belonging to the town of Oakland, and to provide for the construction of wharves," and do hereby accept the same.

SECTION 2. In consideration of the memorial of said Carpentier to this board, and of five dollars paid by him to the treasurer of this town, the time allowed to the said Carpentier in which to construct a wharf at the foot of F street or G street, extending out to boat channel, as required in said ordinance above recited, and in the deed of conveyanee to said Carpentier of the water front of said town, is hereby extended for the period of twelve months from the expiration of the time limited and expressed in said ordinance and conveyance, and the time for the building the wharf at the foot of D or E street is hereby extended in like manner for eight months from its expiration.

Passed Dec. 30th, 1852.

(Signed) A. MARIER,
President of the Board of Trustees.

(Signed) F. K. SHATTUCK,
Clerk Board Trustees.

Endorsed: Exhibit D. Filed May 1, 1858. Signed, Geo. Pen Johnston, clerk, by E. C. Palmer, deputy.

Exhibit E.

An ordinance concerning the wharves and the water front.

The board of trustees of the town of Oakland, at a regular meeting thereof, do resolve and ordain as follows:

SECTION 1. The wharf built by Horace W. Carpentier at the foot of G street having been built within the time and in accordance with the provisions and stipulations of "An ordinance for the disposal of the water front belonging to the town of Oakland, and to provide for the construction of wharves," and of "An ordinance to approve the wharf at the foot of Main street, and to extend the time for the construction of the other wharves," the same is hereby approved by the board.

SECTION 2. The school-house mentioned and described in said first above-recited ordinance, which the said Carpentier contracted to build, in part consideration for the water front of said town, as sold and conveyed to him in said ordinance, and by deed dated May 31, 1852, having been built and completed to the satisfaction of this board, and according to the terms of said ordinance and contract, and the said school-house having been delivered into the possession and occupancy of this town, it is hereby accepted and approved by this board.

SECTION 3. The other wharf provided for and described in said ordinance and deed may be built by the said grantee at the foot of Castro street or Grove street, instead of at the foot of D street or E street, as prescribed in said ordinances and deed.

SECTION 4. The said ordinance entitled "An ordinance for the disposal of the water front belonging to the town of Oakland, and to provide for the construction of wharves," for the considerations therein set forth and expressed, and now in chief satisfactorily paid and performed, and in consideration of the premises, is hereby ratified and confirmed; and the said water front of the town as therein described is hereby granted, sold, and conveyed unto the said Carpentier and his legal representatives, in fee simple, forever, with the right to erect wharves, piers, and docks, and buildings, at any and all points thereon, not obstructing navigation, and to freely use and occupy the lands herein conveyed.

SECTION 5. The clerk of the board of trustees shall give to the said grantee a copy of this ordinance, signed by the president of the board, and sealed with the corporate seal.

Passed August 27th, 1853.

(Signed) A. W. BARRELL,
President of the Board of Trustees.
(Signed) A. S. HURLBUT,
Clerk of the Board of Trustees.

I, Ambrose S. Hurlbut, clerk of the board of trustees of the

town of Oakland, duly elected and qualified, do hereby certify that the foregoing document is a true and correct copy of an original ordinance passed by the board of trustees, and now on file in my office.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said town, at Oakland, this 29th day of August, 1853.

[SEAL OF THE TOWN OF OAKLAND.]

(Signed) A. S. HURLBUT,
Clerk of the Board of Trustees.

STATE OF CALIFORNIA,
County of Alameda, ss:

On this the tenth day of September, A. D. 1853, before me, a justice of the peace in and for said county, duly elected and qualified, personally appeared Albert W. Barrell, president of the board of trustees of the town of Oakland, and Ambrose S. Hurlburt, clerk of said board, personally known to me as such officers, who severally acknowledged to me that they signed and executed the foregoing instrument, in and by virtue of their official capacity as such officers, freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my private seal, at Oakland, in said county, the date last above written.

[SEAL.]

(Signed) A. MARIEN,
Justice of the Peace.

(Endorsed:) Exhibit "E." Filed May 1st, 1858. (Signed) Geo. Pen Johnston, clerk, by E. C. Palmer, deputy.

Exhibit F.

An ordinance to create a public ferry between the town of Oakland and the city of San Francisco, and to provide for keeping up and running the same.

The board of trustees of the town of Oakland, having had the matter under advisement, and being impressed with the importance to said town of a well-regulated ferry, do resolve and ordain as follows:

SECTION 1. The said board of trustees, acting in behalf of said town, and pursuant to the powers conferred upon them by the act of the legislature of the State of California, passed May 4th, 1852, and entitled "An act to incorporate the town of Oakland, and to provide for the construction of wharves thereat," do hereby make, open, widen, lay out, grant, create, ordain, establish, and regulate a public ferry between the said town of Oakland, in the county of

Contra Costa, and the city of San Francisco, to be called the Oakland ferry; and they do hereby bargain and contract with Edward R. Carpentier, his heirs, agents, and assigns, to run said ferry for the period of twenty years, according to the terms of this ordinance, either as a separate ferry, or in connection with or continuance of the one already established and used between said town and said city, hereby granting, selling, and releasing, and conveying unto the said Carpentier, and to his successors in interest and assigns, exclusively, for the said period of twenty years, the right to keep and run a public ferry or public ferries, so as to demand or receive compensation therefor, between the said town of Oakland and the city of San Francisco, or between the said town of Oakland and any other place, together with all and singular the ferry rights, privileges, and franchises which now are or may hereafter be held and owned by said town.

SECTION 2. The said grantee, without charge or expense to said town, shall keep up and run said ferry or cause it to be kept up and conducted during the time aforesaid.

SECTION 3. After the 1st day of May, 1854, one per cent. of the net profits of said ferry shall be paid to the town of Oakland, and a statement of the receipts and expenditures of said ferry shall be made annually afterwards under oath to said town.

SECTION 4. The said grantee, and his successors in interest, and assigns, in consideration of his or their services and investment of capital, shall be entitled to receive, to his and their own use and benefit, all the receipts, profits, and emoluments of said ferry, except as herein reserved to said town in the third section of this ordinance; but the rate of ferriage so charged and received shall not exceed the rates now allowed or charged upon the ferry running between the town of Oakland and the city of San Francisco.

SECTION 5. The president or president pro tempore, together with the clerk of the board, are hereby directed, on behalf of the town, and in the name of the board, to make and sign a contract with the grantee in accordance with the terms of this ordinance.

Passed March 5, 1853.

(Signed) A. W. BARRELL,
Pres't pro tem. of the Board of Trustees.
(Signed) A. S. HURLBURT,
Clerk of Board of Trustees.

(Endorsed:) Exhibit "F." Filed May 1, 1858. (Signed) Geo. Pen Johnston, clerk, by E. C. Palmer, deputy.

Exhibit G.

This contract, made and entered into this twelfth day of March, one thousand eight hundred and fifty-three, between the board of trustees of the town of Oakland, acting on behalf of said town,

party of the first part, and Edward R. Carpentier, party of the second part, witnesseth as follows:

The said party of the first part, in its official capacity, and in accordance with the provisions of an ordinance of the said board of trustees, passed March 5th, 1853, and entitled "An ordinance [to] create a public ferry between the town of Oakland and the city of San Francisco, and to provide for keeping up and running the same," doth hereby declare, contract, and agree with the said party of the second part, that the said trustees of the town of Oakland have made, opened, widened, laid out, granted, created, ordained, established, and regulated a public ferry between the said town of Oakland, in the county of Contra Costa, and the city of San Francisco; and in consideration of the covenants, and subject to the conditions hereinafter expressed, the said party of the first part doth bargain and contract with the said Edward R. Carpentier, party of the second part, his heirs, agents, and assigns, to run said ferry for the period of twenty years, according to the terms of the ordinance aforesaid, either as a separate ferry, or in conjunction with or continuance of the one already established and used between the said town of Oakland and *and* said city—hereby granting, selling, releasing, [and] conveying unto the said party of the second part, and to his successors in interest, and assigns, exclusively, for the said period of twenty years, the right to keep and run a public ferry or ferries, so as to demand and receive compensation therefor, between the said town of Oakland and the city of San Francisco, or between the said town or any other place, together with all and singular the ferry rights, privileges, and franchises which now or hereafter may be held or owned by said town. And the said party of the first part, acting as aforesaid, doth hereby covenant and agree with the said party of the second part, his successors in interest, and assigns, that in consideration of his or their services and investment of capital, that the said party of the second part, his agents or assigns, shall be entitled to and may receive to his or their own use and benefit all the receipts, profits, and emoluments of said ferry, except one per cent. of the net profits of said ferry, after the first day of May, one thousand eight hundred and fifty-four, which is hereby reserved and shall be payable to the town of Oakland; and the rates of ferriage so charged and received shall not exceed the rates now charged or allowed upon the ferry running between the town of Oakland and the city of San Francisco. And the said party of the second part, in consideration of the premises, for himself, his successors and assigns, hereby covenants and agrees that he and they will, without charge or expense to said town, keep up and run said ferry, or cause it to be kept up and conducted, during the term of twenty years as aforesaid, and that the first day of May, 1854, he or they will pay to the said town one per cent. of the net profits of said ferry, and that he will make annually afterwards to said town a statement, under oath, of the

receipts and expenditures of said ferry, and also that the rates of ferriage charged and received on said ferry shall not exceed the rates now charged or allowed upon the above-named ferry already established.

In witness whereof, the said party of the first part, by Albert W. Barrell, president pro tempore of said board of trustees, and Ambrose S. Hurlburt, clerk of said board, have hereunto set their hands and private seals, the said town having no corporate seal as yet provided, and the said party of the second part doth hereunto set his hand and seal, at Oakland, the day and year first above written.

(Signed) A. S. HURLBURT, [SEAL.]
Clerk of the Board of Trustees of the town of Oakland.
(Signed) A. W. BARRELL, [SEAL.]
President pro tempore of Board of Trustees.
(Signed) E. R. CARPENTIER, [SEAL.]

(Endorsed:) Exhibit "G." Filed May 1, 1858. (Signed) Geo. Pen Johnston, clerk, by E. C. Palmer, deputy.

Exhibit H.

This indenture, made this twenty-first day of October, A. D. eighteen hundred and fifty-four, by and between Horace W. Carpentier, of the city of Oakland, State of California, Edward R. Carpentier, of the city of San Francisco, State aforesaid, and Harriet N. Carpentier, of the State of New York, by her attorney in fact, H. W. Carpentier, parties of the first part, and Charles Minturn, of the city of San Francisco, and that certain company having its principal office in the city of San Francisco, and incorporated by the name and style of the Contra Costa Steam Navigation Company, parties of the second part, witnesseth: That the said parties of the first part, for and in consideration of the covenants and agreements hereinafter contained, on the part of the parties of the second part to be performed, do hereby grant, bargain, sell, and assign unto the said parties of the second part, their legal representatives, successors, or assigns, for the term of twenty years from the 12th day of March, A. D. 1853, the exclusive right and privilege of landing with steam ferry-boats, running between said city of Oakland and the city of San Francisco, or between said city of Oakland and any other place, at any wharf or landing which now is or may *hereinafter* be constructed in the city, formerly the town of Oakland, which the said parties of the first part, or either of them, may have acquired or be entitled to by virtue of any ordinances of the board of trustees of the town of Oakland, or of any deed, conveyance, contract, or grant from said town, hereby fully authorizing the said parties of the second part, in their own name or names, and at their own expense, to use all measures and bring

all suits necessary to enforce and maintain said exclusive right, and to prevent any and all persons from interfering with the same; the said party of the first part reserving to themselves and their assigns the right freely to use and occupy or dispose of the water front of Oakland, or any part thereof, and the entire and exclusive management and control of the wharves and wharfage in said city of Oakland, provided the same be not done in any manner inconsistent with the intent of this agreement and accept as herein otherwise provided. Said party of the first part shall and will assign and set apart a suitable and sufficient portion of their wharves in said city of Oakland, to be devoted to the exclusive use of the ferry-boats; hereby granting to the party of the second part the right and privilege of erecting, keeping, and using toll gates on such portion of said wharves, for the collection of ferriage. The said party of the first part covenants, for themselves, their legal representatives and assigns, that they will refund to the said parties of the second part all wharfage and dockage which may be charged and collected by them on the boats, fuel, and all other materials used in the running of said ferry-boats by the said parties of the second part, (which shall be at the usual and uniform rates,) less the amount of the per centage thereon payable to the town of Oakland and its successors in interest; the said party of the second part hereby agreeing and undertaking to make good and repair all damage which may be done to the wharves and landings in Oakland by their ferry-boats landing thereat. The said Edward R. Carpentier, one of the parties of the first part, for and in consideration of the covenants and agreements herein contained, on the part of the parties of the second part to be performed, hereby grants, bargains, sells, assigns, and transfers unto the said party of the second part that certain contract for the establishing and maintaining a public ferry between the city of Oakland and the city of San Francisco, or between the city of Oakland and any other place, entered into between the said Carpentier and the said town of Oakland on the 12th day of March, A. D. 1853, together with all his rights, privileges, franchises, and interests, under and by virtue of said contract, (a copy of which is hereunto , marked B,) and of the ordinance of the board of trustees of said town passed March 5, 1853, and entitled "An ordinance to create a public ferry between the town of Oakland and the city of San Francisco, and to provide for the keeping up and running the same," (a copy whereof is hereto attached, marked A,) and also his right, title, and interest in the ferry now in operation under said ordinance and contract. It is mutually agreed by and between the parties hereto, that the contract concerning the Contra Costa ferry, heretofore entered into by H. W. Carpentier and A. Moon with Wm. M. Brown, and by said Brown assigned to the said party of the second part, a copy *of* whereof is hereto annexed, marked "C," is hereby cancelled, annulled, and set aside, provided

the balance of the per centage under said contract shall first be paid to said Carpentier according to the terms thereof. The said party of the second part shall and will, at their own expense, and without charge or liability to the parties of the first part, or to the city of Oakland, keep up and run the said ferry between Oakland and San Francisco for the term of twenty years from the 12th day of March, 1853, in accordance with the provisions of said ordinance and contract and of this agreement, and shall pay to the town of Oakland or its successors in interest the net per centage reserved to said town in said contract and ordinance, and shall make an annual statement, under oath, as therein mentioned. Said parties of the second part shall and will provide suitable boats for said ferry, and run the same, making an average of at least six crossings per day, unless prevented by accident or stress of weather or legal process, or other unavoidable detention, and the rates of charges shall never exceed the rates now charged and received upon the ferry already established. In consideration of the covenants, releases, and assignments hereinbefore contained, the said parties of the second part, and their assigns and successors in interest, shall pay to the said parties of the first part, their representatives or assigns, monthly, on the first Monday of each month, for the term of twenty years, during the continuance of this contract, as follows: for the first three and one-half years, from the 1st day of October, A. D. 1854, six per centum of the whole or gross receipts of the said Oakland ferry, and of the ferry now established between the city of Oakland and the city of San Francisco, and of any and all ferries which are or may hereafter be established or continued between any point in the city of Oakland, or on the San Antonio creek or estuary, and the city of San Francisco, or between any point or points in the city of Oakland or on said creek or estuary and any other place, whether said receipts arise from the transportation of passengers, freight, merchandise, or from tonnage; and during the balance of said term of twenty years, they shall pay to the said parties of the first part seven and one-half per centum of the gross receipts of the said ferry or ferries, payable monthly as aforesaid. The said parties of the second part shall also keep books open to the inspection of said parties of the first part, in which there shall be entered separately the amount of receipts for each day. The parties of the first part shall have the right of free ferriage for themselves and their own freight, not, however, including any articles or commodities for sale or merchandise, which right or privilege shall not be transferable except to their agents or personal representatives when absent. They shall also have the privilege of naming three persons, who shall have the right of free passage or passages on said ferry, but such right shall not be transferable by such persons, nor by the parties of the first part, oftener than once in six months.

In case any railroad should hereafter be constructed, having a terminus in the city of Oakland, the said party of the second part shall have the privilege of connecting with such railroad by steamers, on the like terms and conditions as those hereinbefore mentioned; and in case said party of the second part shall refuse or neglect to form such connection by steamers with any such railroad, and to afford such ferry accomodations as may be necessary for such railroad, the party of the first part shall have the privilege of putting on and running boats to form such connection without prejudice or violation of this contract. The said parties of the first part shall have the right from time to time, as occasion may require, to designate at least one wharf in the city of Oakland for the landing of the boats used in said ferry, provided, however, that no change of landing shall be made more frequently than once in one or two years. No boat shall pass the wharf so designated without stopping to land and receive passengers. No boat shall be required, however, to make more than one landing in the city of Oakland. Any failure on the part of either party to this contract to comply with the terms hereof in all respects, shall render such party so failing liable to the other party in damages, for any injury they or either of them may sustain in consequence thereof. And any failure or refusal on the part of the parties of the second part to run said ferry according to the terms of this contract, or to pay to the said parties of the first part or their assigns the per centage upon the profits of said ferry, as hereinbefore described, for the space of six months after the same shall become due and payable, shall operate to revest in the parties of the first part respectively the rights and privileges herein and hereby vested in the parties of the second part, and this contract shall thenceforth become null and void; provided, however, that such failure shall not be caused by any act or omission on the part of said parties of the first part. Should any other grant or privileges touching said ferry be acquired by either of the parties, or any individual a party to this contract, or their assigns or successors in interest, by legislation or otherwise, the same shall in all respects be subject to the terms of this agreement during the period aforesaid. And to the faithful performance of all the terms and obligations of this contract the said respective parties hereto bind themselves, their legal representatives, successors, and assigns, forever, firmly by these presents.

In witness whereof, the said Horace W. Carpentier and Edward R. Carpentier, in person, and the said Harriet N. Carpentier, by H. W. Carpentier, her attorney in fact, and the said Charles Minturn, by Walter B. Minturn, attorney in fact, have hereunto set their hands and seals, and the said Contra Costa Steam Navigation Company, acting by and through its president and secretary, has

hereunto set its corporate seal, on this day and year first above written.

(Signed) HORACE W. CARPENTIER, [SEAL.]
" EDWARD R. CARPENTIER, [SEAL.]
" HARRIET N. CARPENTIER, [SEAL.]
By her attorney in fact,
" H. W. CARPENTIER.
" CHAS. MINTURN, [SEAL.]
By his att'y in fact,
W. B. MINTURN.
" HORATIO N. SQUIRE, [SEAL.]
President Contra Costa Steam Navig'n Co.
[C. C. S. N.] [CO. SEAL.] " W. B. MINTURN, [SEAL.]
Sect'y Contra Costa St'm Navg'n Co.

STATE OF CALIFORNIA,
County of San Francisco, ss:

On this eighth day of March, A. D. 1855, before me, Richard A. Harrison, a notary public in and for said county, personally appeared Horace W. Carpentier and Edward R. Carpentier, personally known to me to be two of the individuals described in and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and at the same time also personally appeared before me Horace W. Carpentier, personally known to me to be the person who is the att'y in fact of Harriet N. Carpentier, also known to me to be the same person described in and who by her said attorney executed the said instrument, and the said Horace W. Carpentier acknowledged that he executed the said instrument, as such attorney, freely and voluntarily, as and for the act and deed of the said Harriet N. Carpentier, for the uses and purposes therein mentioned; and at the same time personally appeared Walter B. Minturn, personally known to me to be the individual who is the attorney for Charles Minturn, also known to me to be the same person described in and who, by his said attorney, executed the said instrument, and the said Walter B. Minturn acknowledged that he executed the same, as such attorney, freely and voluntarily, as and for the act and deed of the said Charles Minturn, for the uses and purposes therein mentioned; and at the same time personally appeared Horatio N. Squire and Walter B. Minturn, to me personally known to be respectively president and secretary of the Contra Costa Steam Navigation Company, to me also personally known to be the same company described in and which, by its said president and secretary and its corporate seal, executed the said instrument, and severally acknowledged that they so executed the said instrument freely and voluntarily, as and for the act and deed of the said company, for the uses and purposes therein mentioned; and I also certify that I know the said corporate seal so affixed to

be the corporate seal of the said company, and used by it in the authentication of all instruments executed by said company.

In witness whereof, I have hereunto set my hand and affixed my official seal, at San Francisco aforesaid, the day and year first above written.

[NOTARIAL SEAL.]

(Signed) R. H. HARRISON,
Notary Public.

(Endorsed:) Exhibit "H." Filed May 1, 1858. (Signed) Geo. Pen Johnston, clerk, by E. C. Palmer, deputy.

Exhibit I.

This indenture, made this first day of April, A. D. one thousand eight hundred and fifty-eight, by and between Charles Minturn, of the city of San Francisco, and the Contra Costa Steam Navigation Company, a body corporate having its principal office of business in said city, parties of the first part, and Edward Minturn, of the city of New York, in the State of New York, merchant, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of twenty thousand dollars secured to be paid by the said party of the second part, have sold, given, granted, conveyed, assigned, transferred, and do by these presents sell, give, grant, convey, assign, and transfer, jointly and severally, unto said party of the second part, his executors, administrators, and assigns, all and singular the "Oakland ferry," being that certain ferry established between the town of Oakland and the city of San Francisco, and which was established and granted by the municipal authorities of said town of Oakland, by ordinance passed the 27th day of May, A. D. one thousand eight hundred and fifty-three, and by contract entered into in pursuance thereof between said town and Edward R. Carpentier, the grantee therein named, for the term and according to the conditions in said ordinance and contract specified, and also all the right, title, estate, powers, interest, privileges, uses, and franchises granted to, acquired by, or vested in the said Edward R. Carpentier or the said parties of the first part, appertaining to said ferry or incident thereto, together with all the right, title, interest, and privileges of the said party of the first part, or either of them, in and to the use of the wharves and landings in said town (now city) of Oakland of and concerning said ferry, with the powers and privileges incident thereto, as fully and completely as the same were held, exercised, and enjoyed by the said party of the first part, or either of them, under and by virtue of a certain indenture made by and between Horace W. Carpentier, Edward R. Carpentier, and Harriet N. Carpentier of the one part, and the said parties of the first part of the other part, and dated the 21st day of October, A. D. 1854, or under or by virtue of any other indenture, contract,

matter, or thing whatsoever, to the same extent as if they were herein represented at length; subject, nevertheless, to the covenants and conditions of the said grant and contract between the town of Oakland and Edward R. Carpentier, and of the said indenture above mentioned between Horace W. Carpentier, E. R. Carpentier, and Harriet N. Carpentier, and the said parties of the first part.

And the said parties of the first part do hereby let and lease unto the said party of the second part, his executors, administrators, and assigns, the two steamboats constructed for and used in running said ferry, called the Contra Costa and the Clinton, for the term of one year from the date hereof, in consideration of and upon the terms and conditions hereinafter named, that is to say, the said parties of the first part covenant and agree to and with the said party of the second part, that they will, during the said term of one year, continue to man, equip, supply, and run said steamboats upon said ferry, as occasion shall require, at their own proper expense; to collect the fare, and out of the profits accruing therefrom pay to the said Horace W. Carpentier and Edward R. Carpentier, and also to the city of Oakland (succeeding the town of Oakland) the per centages secured to them respectively by the terms of the indentures aforesaid, dated the 21st day of October, A. D. 1854, as therein specified; also to pay Charles Minturn a commission of two and one-half per centum on all the receipts and disbursements of said boats, (which the said party of the second part hereby stipulates to allow;) and of the residue of the accruing profits two-thirds shall be retained by the said parties of the first part, and one-third shall be paid to the said party of the second part or his order; and the said parties of the first part shall keep a correct account of the business aforesaid, according to the terms of this indenture, subject to the examination and inspection of the said party of the second part or his attorney in fact.

In witness whereof, the respective parties aforesaid have hereunto set their hands and seals, on the day and year first above written.

(Signed) CHARLES MINTURN, [SEAL.]
" HORATIO N. SQUIER,
President Contra Costa St'm Nvg. Co.
(Signed) WALTER B. MINTURN,
Sect'y Contra Costa St'm Nvg. Co.
[CORPORATE SEAL OF THE C. C. S. N. CO.]
EDWARD MINTURN, [SEAL.]
By his attorney, B. M. HARTSHORNE.

(Endorsed:) Exhibit "I." Filed May 1, 1858. (Signed) Geo. Pen Johnston, clerk, by E. C. Palmer, deputy.

Subpœna.

UNITED STATES OF AMERICA,
Circuit Court United States
For the Districts of California.

In equity.

The President of the United States, to James B. Larue, Carlisle P. Patterson, and John R. Fouratt, greeting:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room, in San Francisco, on the first Monday in June next, to answer a bill of complaint exhibited against you in said court by Edward Minturn, who is a citizen of the State of New York, and to do and receive what the said court shall have considered in that behalf; and that you are not to omit under the penalty of five thousand dollars.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this 3d day of May, in the year of our Lord one thousand eight hundred and fifty-eight, and of our independence the 82d.

(Signed) GEO. PEN JOHNSTON, *Clerk.*
Per CUTLER McALLISTER, *D. C.*

Memorandum pursuant to Rule 12, *Supreme Court U. S.*

You are hereby required to enter your appearance in the above suit, on or before the first Monday of June next, at the clerk's office of said court, pursuant to said bill, otherwise the said bill will be taken up pro confesso.

UNITED STATES MARSHAL'S OFFICE,
Northern District of California.

I hereby certify that this subpœna in equity was received on the 3d day of May, 1858, and served personally by copy on James B. Larue, Carlisle P. Patterson, and John R. Fouratt, the within-named defendants, in the city of San Francisco, on the 4th day of May, 1858.

San Francisco, May 4th, 1858.

(Signed) P. L. SOLOMON,
U. S. Marshal.
By JOHN H. WILLIAMS,
Deputy.

(Endorsed:) Filed May 4, 1858. (Signed) Geo. Pen Johnston, clerk, by Cutler McAllister.

Entry of Appearance.

CIRCUIT COURT OF THE UNITED STATES
For the Districts of California, Northern District.

EDWARD MINTURN
vs.
JAMES B. LARUE, C. P. PATTERSON, and J. R. FOURATT. } In equity.

We hereby enter appearance for all the defendants in above-entitled action, this 7th day of June, 1858.

(Signed) CROCKETT, BALDWIN & CRITTENDEN,
Sol. for Defts.

(Signed) GEO. PEN JOHNSTON, *Clerk.*
CUTLER McALLISTER, *Deputy.*

Demurrer.

IN THE CIRCUIT COURT OF THE UNITED STATES
For the Districts of California.

EDWARD MINTURN, complainant,
vs.
JAMES B. LARUE, CARLISLE P. PATTERSON, and JOHN R. FOURATT, defendants. } In equity.

These defendants, James B. Larue, Carlisle P. Patterson, John R. Fouratt, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true, in such manner and form as the same are therein set forth and alleged, do demur to the said bill, and for cause of demurrer show that the said complainant has not, by his said bill, made such a case as entitles him in a court of equity to any relief against these defendants nor any of them as to the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto; and they pray the judgment of this honorable court whether they shall be compelled to make any further and other answer to the said bill; and they humbly pray to be dismissed from hence with their reasonable costs in this behalf sustained.

GREGORY YALE, and
CROCKETT, BALDWIN & CRITTENDEN,
Solicitors for Defendants.

James B. Larue, one of the above-named defendants, being duly sworn, deposes and says that the foregoing demurrer is not interposed for delay.

(Signed) JAMES B. LARUE.

Subscribed and sworn to before me this 6th day of July, 1858.

(Signed) W. H. CHEEVERS, *U. S. Comm'r.*

We, the undersigned, Gregory Yale and A. P. Crittenden, solicitors in chancery, and of counsel for the defendants within named, do certify that, in our opinion, the within demurrer is well founded in points of law.

San Francisco, July 5th, 1858.

(Signed) GREGORY YALE,
A. P. CRITTENDEN,
Of Counsel for Defts.

Filed July 7, 1858.

GEO. PEN JOHNSTON, *Clerk.*
(Signed) CUTLER McALLISTER, *Deputy.*

Decree.

IN THE CIRCUIT COURT OF THE UNITED STATES
For the Districts of California, Northern District.

July term, 1858.

EDWARD MINTURN
vs.
JAMES B. LARUE, CARLISLE P. PATTERSON, and JOHN R. FOURATT. } In equity.

This cause coming on to be heard upon the demurrer of the defendants to the complainant's bill, was argued by counsel. Thereupon, and upon consideration thereof, it was ordered, adjudged, and decreed by the court that the demurrer aforesaid be sustained, and that the said bill be dismissed. It was also adjudged that the said complainant pay the costs herein to be taxed.

Ordered, adjudged, and decreed this 16th day of August, 1858.

(Signed) M. HALL McALLISTER, *Judge, &c.*

Filed Aug. 16, 1858.

(Signed) GEO. PEN JOHNSTON, *Clerk.*
By CUTLER McALLISTER, *D. C.*

Order granting Appeal.

IN THE CIRCUIT COURT OF THE UNITED STATES
For the Districts of California, Northern District.

July term, 1858.

EDWARD MINTURN
vs.
JAMES B. LARUE, CARLISLE P. PATTERSON, and JOHN R. FOURATT.

And now, on this 16th day of August, 1858, during the term aforesaid, appeared the parties aforesaid in open court, and the complainant prayed an appeal from the decree of the court pro-

nounced in this cause on the day aforesaid to the Supreme Court of the United States, at the next succeeding term thereof. It is thereupon ordered by the court that said appeal be and the same is hereby granted, upon the complainant's giving an appeal bond, with Edward Seaman, Walter B. Minturn, and B. M. Hartshorne as sureties, in the sum of two hundred dollars.

(Signed) M. HALL McALLISTER, *Judge.*

(Endorsed:) Filed Aug. 16, 1858. (Signed) Geo. Pen Johnston, clerk, by Cutler McAllister, d. c.

Bond on Appeal.

CIRCUIT COURT OF THE UNITED STATES
For the Districts of California, Northern District.

EDWARD MINTURN
vs.
JAMES B. LARUE, CARLISLE P. PATTERSON, and JOHN R. FOURATT. } On appeal.

Know all men by these presents, that we, Edward Minturn, Walter B. Minturn, Edward Seaman, and Benjamin Hartshorne, are held and firmly bound unto the above-named James B. Larue, Carlisle P. Patterson, and John R. Fouratt, in the sum of two hundred dollars, to be paid to them, their executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 17th day of August, 1858.

Whereas the above-named Edward Minturn hath prayed and obtained an appeal to the Supreme Court of the United States, from the decree rendered in the above-entitled cause in the circuit court of the United States for the districts of California in the northern district of said State: now, therefore, the condition of this obligation is such, that if the above-named appellant, Edward Minturn, shall prosecute his said appeal with effect, and shall answer all damages and costs in case he shall fail therein, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) EDW. MINTURN, [SEAL.]
By his attorney,
B. M. HARTSHORNE.
" W. B. MINTURN. [SEAL.]
" EDWARD SEAMAN. [SEAL.]
" B. M. HARTSHORNE. [SEAL.]

Sealed and delivered in presence of—
(Signed) CUTLER McALLISTER, *U. S. Com'r.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Edward Seaman, Walter B. Minturn, and B. M. Hartshorne, being duly sworn, depose and say, and each for himself deposes and says, that he is worth the sum of four hundred dollars over and above all his just debts and liabilities and property exempt from taxation.

(Signed) EDWARD SEAMAN,
" W. B. MINTURN,
" B. M. HARTSHORNE.

Subscribed and sworn to before me this 17th day of Aug., 1858.
(Signed) CUTLER McALLISTER,
U. S. Com'r.

[C. M'ALLISTER, COMMISSIONER, SEAL.]

Endorsed: Filed Aug. 17, 1858. Geo. Pen Johnston, clerk, per Cutler McAllister, d. c.

Approved.

M. HALL McALLISTER, *Judge, &c.*

I, Geo. Pen Johnston, clerk of the circuit court of the United States for the districts of California, do hereby certify that the foregoing pages, from 1 to 53, both inclusive, contain a full, true, and correct transcript of the proceedings had in above-entitled cause.

Witness my hand and the seal of said court, at the court-house in the city of San Francisco, this 19th day of August, A. D. 1858.
[SEAL.]

GEO. PEN JOHNSTON, *Clerk.*
By CUTLER McALLISTER, *D. C.*